

EXHIBIT 5

PUBLIC-REDACTED VERSION

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Lasinski, Michael J.

February 17, 2021

1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MONARCH NETWORKING

SOLUTIONS LLC,

Plaintiff,

v.

CISCO SYSTEMS, INC.,

Defendant.

- - - - -

CIVIL ACTION NO.

2:20-CV-00015-JRG

** HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY **

VIDEOTAPED DEPOSITION of MICHAEL J. LASINSKI,
taken remotely, on February 17, 2021 commencing at
9:10 a.m. eastern time, before Jeffrey Benz, a
Certified Realtime Reporter, Registered Merit
Reporter and Notary Public within and for the
State of New York.

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Lasinski, Michael J.

February 17, 2021

2 (Pages 2 to 5)

<p style="text-align: right;">2</p> <p>1 A P P E A R A N C E S:</p> <p>2</p> <p>3 SUSMAN GODFREY L.L.P.</p> <p>4 Attorneys for Plaintiff</p> <p>5 1201 3rd Avenue</p> <p>6 Seattle, Washington 98101</p> <p>7 BY: KATHERINE PEASLEE, ESQ.</p> <p>8 KPeaslee@susmangodfrey.com</p> <p>9 206-505-3828</p> <p>10</p> <p>11 DESMARAIS LLP</p> <p>12 Attorneys for Defendant</p> <p>13 230 Park Avenue</p> <p>14 New York, New York 10169</p> <p>15 BY: TAMIR PACKIN, ESQ.</p> <p>16 tpackin@desmaraisllp.com</p> <p>17 212-351-3403</p> <p>18</p> <p>19</p> <p>20 ALSO PRESENT:</p> <p>21 JOE TOWNSEND, Videographer</p> <p>22 DAVID NELSON, Videographer Assistant</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 THE VIDEOGRAPHER: Here begins the</p> <p>2 videotape deposition of Michael Lasinski,</p> <p>3 taken of the matter of Monarch Networking</p> <p>4 Solutions LLC, v. Cisco Systems, Incorporated</p> <p>5 and Charter Communications, Incorporated, in</p> <p>6 the United States District Court, for the</p> <p>7 Eastern District of Texas, Marshall Division.</p> <p>8 Case Number 220-CV-00015-JRG.</p> <p>9 Today's date is February 17, 2021. The</p> <p>10 time is 9:10 a.m. eastern. This deposition</p> <p>11 is being held remotely via Zoom video</p> <p>12 conferencing software.</p> <p>13 The court reporter is Jeff Benz. I am</p> <p>14 Joe Townsend, the video camera operator, and</p> <p>15 we are both here on behalf of Henderson Legal</p> <p>16 Services.</p> <p>17 Will counsel please introduce themselves</p> <p>18 and state whom they represent.</p> <p>19 MS. PEASLEE: Katherine Peaslee on</p> <p>20 behalf of plaintiff Monarch.</p> <p>21 MR. PACKIN: Tamir Packin from Desmarais</p> <p>22 LLP on behalf of Cisco Systems, Inc.</p> <p>23 THE VIDEOGRAPHER: Will the court</p> <p>24 reporter please swear in the witness, after</p> <p>25 which we can proceed.</p>
<p style="text-align: right;">3</p> <p>1 INDEX</p> <p>2 MICHAEL J. LASINSKI</p> <p>3 Examination by: Page</p> <p>4 MR. PACKIN 6</p> <p>5</p> <p>6 EXHIBITS</p> <p>7 Number Description Page</p> <p>8 Exhibit 1 PDF copy of expert report 7</p> <p>9 of Michael Lasinski</p> <p>10 Exhibit 2 Native Excel versions of 7</p> <p>11 Exhibit C</p> <p>12 Exhibit 3 Preliminary EGM MAP 73</p> <p>13 Pricing</p> <p>14 Exhibit 4 Cisco-MON-EDT-00009908 130</p> <p>15 Exhibit 5 Cisco Adaptive Security 133</p> <p>16 Appliance Mapping,</p> <p>17 Cisco-MON-EDT-00030946</p> <p>18 Exhibit 6 NAICS code for 334118 160</p> <p>19 Exhibit 7 NAICS code 334210 163</p> <p>20 Exhibit 8 iPhone Agreement Amended 223</p> <p>21 and Restated Effective</p> <p>22 January 1, 2017</p> <p>23 Exhibit 9 Mr. Reading's Expert 252</p> <p>24 Report</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 THE COURT REPORTER: I'm going to read a</p> <p>2 stipulation into the record and ask counsel</p> <p>3 to agree.</p> <p>4 The attorneys participating in this</p> <p>5 deposition acknowledge that I am not present</p> <p>6 in the room and will be reporting this</p> <p>7 deposition remotely.</p> <p>8 They further acknowledge that in lieu of</p> <p>9 an oath administered in person, the witness</p> <p>10 will be sworn in remotely.</p> <p>11 The parties and their counsel consent to</p> <p>12 this arrangement and waive any objections to</p> <p>13 this manner of reporting. Please indicate</p> <p>14 your agreement by stating your name and your</p> <p>15 agreement on the record.</p> <p>16 Counsel?</p> <p>17 MS. PEASLEE: Katherine Peaslee of</p> <p>18 Susman Godfrey on behalf of plaintiffs, so</p> <p>19 stipulated.</p> <p>20 MR. PACKIN: Tamir Packin, I agree.</p> <p>21 MICHAEL LASINSKI,</p> <p>22 called as a witness, having been first</p> <p>23 duly sworn by Jeffrey Benz, a Notary</p> <p>24 Public within and for the State of New</p> <p>25 York, was examined and testified as</p>

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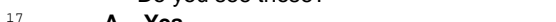

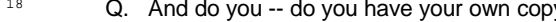
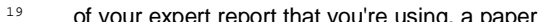
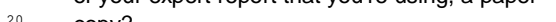




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February 17, 2021

3 (Pages 6 to 9)

<p style="text-align: right;">6</p> <p>1 follows:</p> <p>2 EXAMINATION BY MR. PACKIN:</p> <p>3 Q. Good morning.</p> <p>4 A. Good morning.</p> <p>5 Q. You've been deposed plenty of times</p> <p>6 before. Right?</p> <p>7 A. I have been, numerous times.</p> <p>8 Q. Okay. So if -- have you -- have you</p> <p>9 been deposed by Zoom already?</p> <p>10 A. I have, yes.</p> <p>11 Q. Okay. So, you're familiar with the</p> <p>12 procedure. If you don't hear me at any point in</p> <p>13 time, or don't understand, just let me know, and</p> <p>14 I'll repeat or rephrase or we'll figure out if</p> <p>15 there's a technical problem, okay?</p> <p>16 A. Okay.</p> <p>17 Q. And you understand that you're under</p> <p>18 oath?</p> <p>19 A. I do.</p> <p>20 Q. Did you receive the link to the</p> <p>21 Henderson share file folder that has the -- has</p> <p>22 exhibits in it?</p> <p>23 A. I -- I did receive a link, but it does</p> <p>24 not seem to have any exhibits in it.</p> <p>25 Oh, wait, now it does. I just refreshed</p>	<p style="text-align: right;">8</p> <p>1 did put the security code for the Zoom today on</p> <p>2 the front page of it. But that's the only marking</p> <p>3 that I put on it.</p> <p>4 Q. Okay. So feel free to look at the paper</p> <p>5 copy if that's easier for you. I'm looking at a</p> <p>6 paper copy myself just because that's how I'm</p> <p>7 accustomed to doing things, and if we need to try</p> <p>8 to get on the same page literally, I could share</p> <p>9 my screen, and we can resync and then go back to</p> <p>10 the paper copies, but I -- I find it easier to use</p> <p>11 that one as well.</p> <p>12 A. Okay.</p> <p>13 Q. Can you just confirm that the paper copy</p> <p>14 that you have in front of you is the same thing as</p> <p>15 what I've marked as Lasinski Exhibit 1, just so</p> <p>16 that we've got our Is dotted and Ts crossed?</p> <p>17 A. Sure. I'm opening the -- the copy now.</p> <p>18 I mean, as far as I can tell it is. I</p> <p>19 haven't read every -- every page, obviously, of</p> <p>20 the electronic copy, but it's the same number of</p> <p>21 pages, and at least scrolling through it, it looks</p> <p>22 the same.</p> <p>23 Q. Okay. Great.</p> <p>24 Other than the -- the physical copy of</p> <p>25 your report that we've marked as Lasinski</p>
<p style="text-align: right;">7</p> <p>1 it.</p> <p>2 Q. Oh, I guess -- I put it in yesterday,</p> <p>3 but I guess it only goes live once we start the</p> <p>4 deposition.</p> <p>5 </p> <p>6 </p> <p>7 </p> <p>8 </p> <p>9 </p> <p>10 </p> <p>11 </p> <p>12 </p> <p>13 </p> <p>14 </p> <p>15 </p> <p>16 Do you see those?</p> <p>17 A. Yes.</p> <p>18 Q. And do you -- do you have your own copy</p> <p>19 of your expert report that you're using, a paper</p> <p>20 copy?</p> <p>21 A. I did, I -- I brought a paper copy, yes.</p> <p>22 Q. Okay. That -- that's perfectly fine.</p> <p>23 Are there any notes in that copy of your</p> <p>24 report?</p> <p>25 A. No. I mean, just for full disclosure, I</p>	<p style="text-align: right;">9</p> <p>1 Exhibit 1, do you have any other physical</p> <p>2 documents that you brought with you?</p> <p>3 A. I do not, no.</p> <p>4 Q. Okay. And Exhibit 2, that's the --</p> <p>5 those are the native Excel versions of what you</p> <p>6 provided? Right?</p> <p>7 A. Yeah. Except -- something is not right</p> <p>8 in this file.</p> <p>9 Q. Okay.</p> <p>10 A. It looks like some of the links are not</p> <p>11 connecting. I have like a pound value, pound</p> <p>12 value, pound value in the notes and in some of the</p> <p>13 title screens --</p> <p>14 Q. Okay. Let me see.</p> <p>15 A. But --</p> <p>16 Q. Let me see why that is. Let me see if I</p> <p>17 can get the copy that I have locally, maybe I'll</p> <p>18 replace it.</p> <p>19 Problem here.</p> <p>20 Okay.</p> <p>21 A. Maybe we could look in the preview, let</p> <p>22 me try downloading it from there and see if it</p> <p>23 fixes.</p> <p>24 Q. Yeah, so I think if you download it, it</p> <p>25 will fix it. I just downloaded it, and it looks</p>

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February 17, 2021

4 (Pages 10 to 13)

<p style="text-align: right;">10</p> <p>1 to have -- doesn't have that pound value. I think</p> <p>2 it's just in the preview screen. That doesn't</p> <p>3 download all the information for the preview.</p> <p>4 So you can go ahead and click download</p> <p>5 on the right so that you have the full thing with</p> <p>6 all the notes.</p> <p>7 A. Yeah, I'm trying to download it now. It</p> <p>8 seems like it downloaded, but then it -- it won't</p> <p>9 open up.</p> <p>10 Oh, wait, maybe now it will.</p> <p>11 Okay, now it's -- now I have it.</p> <p>12 Q. Is the version of Exhibit 2 that you</p> <p>13 were able to download, does that have the -- the</p> <p>14 linking issue, or is that one correct?</p> <p>15 A. It's correct now.</p> <p>16 Q. Okay, great.</p> <p>17 A. It least it appears -- it appears to be.</p> <p>18 Okay.</p> <p>19 Q. Okay. I'm glad you sorted that out. I</p> <p>20 think for the most part, we could use the paper</p> <p>21 copies instead of the Excels, but if you prefer to</p> <p>22 refer to the Excel, just let me know, and that way</p> <p>23 I can open up the same document.</p> <p>24 I think there's only one part of the</p> <p>25 questioning where the Excel might be easier</p>	<p style="text-align: right;">12</p> <p>1 certain things.</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 A. Yes. Correct.</p> <p>5 Q. And at the very end, it says that you're</p> <p>6 being compensated at a rate -- this is in</p> <p>7 [REDACTED]. Is that</p> <p>8 right?</p> <p>9 A. That is accurate, yes.</p> <p>10 Q. How much have you billed and accrued to</p> <p>11 date?</p> <p>12 A. Today, I think that we've billed about</p> <p>13 [REDACTED]</p> <p>14 Q. And --</p> <p>15 A. I don't know, you said "accrued." I --</p> <p>16 I don't know exactly what January -- yeah, what</p> <p>17 January's bill will be.</p> <p>18 Q. January -- you haven't billed out for</p> <p>19 January yet; is that right?</p> <p>20 A. No, I think it's -- I think that's</p> <p>21 coming.</p> <p>22 Q. And that's -- you served your expert</p> <p>23 report 12 days in, so presumably there will be</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>
<p style="text-align: right;">11</p> <p>1 because I could point to particular cells by</p> <p>2 letter and number, where the printout obviously</p> <p>3 doesn't have that, but I'll let you know when --</p> <p>4 when that is.</p> <p>5 Otherwise, just let me know if you -- if</p> <p>6 you prefer that we look at the Excel, and I can</p> <p>7 look at the Excel with you as opposed to the paper</p> <p>8 copy. Okay?</p> <p>9 A. Yup.</p> <p>10 Q. Okay.</p> <p>11 Okay. So let's go ahead and start on --</p> <p>12 on [REDACTED]</p> <p>13 And just so you know, for full</p> <p>14 transparency, the way I generally do this is I</p> <p>15 sort of march through the report, more or less in</p> <p>16 order. Sometimes I skip around a little, but it's</p> <p>17 more or less just plowing through.</p> <p>18 So that will give you a sense -- and</p> <p>19 we'll have some exhibits that you refer to in here</p> <p>20 that we'll mark as well, but otherwise, it's more</p> <p>21 or less plowing through.</p> <p>22 So you -- you'll have a sense, but some</p> <p>23 modules might take longer than others, but that's</p> <p>24 the way I do it. It's no -- no surprises, just</p> <p>25 trying to find out what you have to say about</p>	<p style="text-align: right;">13</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 MS. PEASLEE: Objection to form.</p> <p>7 [REDACTED].</p> <p>8 Q. Oh, sorry.</p> <p>9 A. But -- today, and then there will be</p> <p>10 January billings on top of that. That's me and my</p> <p>11 colleagues at Ankura.</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 Q. Got it.</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 Q. Okay. Let's go ahead to the next page.</p> <p>22 Looking under your "Assignment," which is labeled</p> <p>23 as Section 3.</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>

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February 17, 2021

5 (Pages 14 to 17)

<p style="text-align: right;">14</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 And then you list the patents. Right?</p> <p>6 A. That is accurate, yes.</p> <p>7 Q. And then in the next paragraph you say,</p> <p>8 My investigation into potential recovery of</p> <p>9 monetary relief began with the necessary</p> <p>10 assumption that liability would be found against</p> <p>11 Cisco for the alleged infringement of the patents</p> <p>12 in suit.</p> <p>13 Right?</p> <p>14 A. That is what it said, you read it</p> <p>15 correctly.</p> <p>16 Q. And so you assume, for the purposes of</p> <p>17 your analysis, that the patents in suit are valid,</p> <p>18 and infringed, right?</p> <p>19 A. Correct.</p> <p>20 Q. And you don't have any opinions on</p> <p>21 infringement. Is that right?</p> <p>22 A. Correct.</p> <p>23 Q. And you don't have any opinions on</p> <p>24 validity; is that right?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">16</p> <p>1 distinction that you were making, if Cisco -- if</p> <p>2 the jury finds that Cisco is not using the patents</p> <p>3 in suit, in other words, is not infringing, then</p> <p>4 the damages would be zero. Is that right?</p> <p>5 A. Again, you know, my understanding is</p> <p>6 that's always a legal conclusion. But that's not</p> <p>7 inconsistent with what I've seen in -- in cases</p> <p>8 and my history of being a damages expert.</p> <p>9 Q. I mean from an -- an economic</p> <p>10 perspective, that's true as well, in terms of --</p> <p>11 if Cisco is not using the patent, not infringing</p> <p>12 the patents in suit, the value of the patents in</p> <p>13 suit to Cisco would be zero in terms of the</p> <p>14 negotiation. Right?</p> <p>15 A. They would not have to pay for them,</p> <p>16 that's right.</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p>
<p style="text-align: right;">15</p> <p>1 Q. So if the jury finds that the patents in</p> <p>2 suit are all invalid, there will be no damages</p> <p>3 due, right?</p> <p>4 A. Well, my understanding is that that's a</p> <p>5 legal conclusion, but based on history and other</p> <p>6 cases that I've worked on, that's what I found.</p> <p>7 Q. Okay. Maybe -- how about this one? If</p> <p>8 the jury finds that the patents are not infringed,</p> <p>9 there will be no value, right?</p> <p>10 A. Well, I wouldn't say no value. My</p> <p>11 understanding is that there wouldn't be an award</p> <p>12 of damages, but ultimately, that's a legal</p> <p>13 conclusion.</p> <p>14 Q. Right, there wouldn't be award of</p> <p>15 damages, but even if you were to try to assess the</p> <p>16 value to Cisco, if Cisco is not using the patents</p> <p>17 in suit for non-infringement purposes, the</p> <p>18 negotiation would result in a zero value because</p> <p>19 they're not using it, right?</p> <p>20 A. For -- for -- Cisco would not have to</p> <p>21 pay damages, that is accurate, yes.</p> <p>22 Q. Oh, God, I'm sorry. I understand my --</p> <p>23 the lack of clarity of my question.</p> <p>24 So just to be clear, because I think I</p> <p>25 said it very inartfully, until I caught on to the</p>	<p style="text-align: right;">17</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 Q. You're not a lawyer; is that right?</p> <p>6 A. That is correct.</p> <p>7 Q. And you're not a technical expert in</p> <p>8 this case; is that right?</p> <p>9 A. That is correct.</p> <p>10 Q. You're not an expert on the technology</p> <p>11 of MAP-T, M-A-P dash T. Is that right?</p> <p>12 A. That is accurate.</p> <p>13 Q. And you're also not an expert on MAP-E.</p> <p>14 Is that right?</p> <p>15 A. Again, I'm not a technical expert on</p> <p>16 MAP-E. I do have economic standards -- opinions</p> <p>17 on that, but I'm not a technical expert.</p> <p>18 Q. Right. And you also are not a technical</p> <p>19 expert in V -- VPLS LSM. Right?</p> <p>20 A. That is right. Correct.</p> <p>21 Q. And so to the extent there's technical</p> <p>22 discussions in your report about the various</p> <p>23 technologies, [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED] s.</p>

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6 (Pages 18 to 21)

<p style="text-align: right;">18</p> <p>1 Q. Now, what you've done in this case is</p> <p>2 present your opinion as to what the appropriate</p> <p>3 level of damages are. Right?</p> <p>4 A. Correct.</p> <p>5 Q. Now, you're familiar with 35 U.S.C. 284?</p> <p>6 A. Yes.</p> <p>7 Q. And so, that -- what that says is, Upon</p> <p>8 finding for the claimant, the Court shall award</p> <p>9 the claimant damages adequate to compensate for</p> <p>10 the infringement, but in no event less than a</p> <p>11 reasonable royalty for the use made of the</p> <p>12 invention by the infringer, together with</p> <p>13 interests and costs as fixed by the Court.</p> <p>14 You're -- you're familiar with that</p> <p>15 statute?</p> <p>16 A. I am, yes.</p> <p>17 Q. And so, the analysis that you applied in</p> <p>18 this case is consistent with the requirements of</p> <p>19 Section 284; is that right?</p> <p>20 A. That is correct.</p> <p>21 Q. And within Section 284, what you're</p> <p>22 focused on for this case is figuring out a</p> <p>23 reasonable royalty for the use made of the</p> <p>24 invention by the alleged infringer, right?</p> <p>25 A. That is correct. I have a reasonable</p>	<p style="text-align: right;">20</p> <p>1 [REDACTED]?</p> <p>2 A. That is correct.</p> <p>3 Q. And so to the ex-- sorry.</p> <p>4 A. It is Appendix B.</p> <p>5 Q. To -- to the extent a document is not</p> <p>6 cited in your report or listed in Appendix B, fair</p> <p>7 to say that you did not consider that document in</p> <p>8 forming your opinions in this case?</p> <p>9 A. Yes. With two exceptions.</p> <p>10 Q. Okay. What were the exceptions?</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 Q. Okay.</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED] have</p> <p>25 either of those caused you to want to change or</p> <p>26 revise the opinions that you've laid out in</p>
<p style="text-align: right;">19</p> <p>1 royalty analysis.</p> <p>2 Q. Now, to reach your reasonable royalty</p> <p>3 analysis, you consider several materials from the</p> <p>4 case, and I -- just for clarity, I've sort of</p> <p>5 moved on to Section 4, "Information Considered."</p> <p>6 A. Is there a question there?</p> <p>7 Q. I'm sorry, let me say it again. I was</p> <p>8 trying to tell you -- tell you where I was and ask</p> <p>9 the question at the same time. So let me try it</p> <p>10 again.</p> <p>11 In considering -- or let me say it --</p> <p>12 say it differently.</p> <p>13 In forming your opinions in this case,</p> <p>14 you considered information relevant to the matter.</p> <p>15 Is that right?</p> <p>16 A. That is correct.</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">21</p> <p>1 Exhibit 1, which is your report?</p> <p>2 A. No.</p> <p>3 Q. You agree that in determining the</p> <p>4 monetary relief in this case, the -- your economic</p> <p>5 theory of damages must be tethered to the fact of</p> <p>6 this case. Right?</p> <p>7 A. Yes.</p> <p>8 Q. So other than -- in -- in paragraph 13,</p> <p>9 you say, It is important to note that the opinions</p> <p>10 and conclusions contained in this report are based</p> <p>11 on the information that has been made available to</p> <p>12 me to date.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Other than the two additional reports</p> <p>16 that you mentioned, [REDACTED]</p> <p>17 [REDACTED] is there any additional</p> <p>18 information that you considered beyond what's</p> <p>19 listed in Appendix B to your report?</p> <p>20 A. No.</p> <p>21 Q. Is it fair to say that the entirety of</p> <p>22 your opinions in this case are contained within</p> <p>23 your expert report, which is Exhibit 1?</p> <p>24 A. My affirmative opinions, yes.</p> <p>25 Q. You're drawing a distinction between</p>

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Lasinski, Michael J.

February 17, 2021

47 (Pages 182 to 185)

<p>182</p> <p>1 when -- then you take into consideration, you</p> <p>2 know, we were already starting to get all those</p> <p>3 other -- all of their other costs paid for, and</p> <p>4 they can earn a profit margin on that. That's in</p> <p>5 addition to that. I haven't attempted to</p> <p>6 calculate those additional profits.</p> <p>7 Q. You said they can get all their other</p> <p>8 costs paid for. What are you referring to?</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p>184</p> <p>1 back. [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED] now is that different than the Nash</p> <p>5 bargaining approach where you're sitting there and</p> <p>6 saying, you know, each party is going to get 50 --</p> <p>7 50/50 percent of the incremental profit in terms</p> <p>8 of economically? Is that -- is that different, or</p> <p>9 is it just a different flavor?</p> <p>10 A. Yeah, the Nash bargaining theory is just</p> <p>11 like the 25 percent rule, just some random</p> <p>12 calculation that's being made.</p> <p>13 This is not that. Obviously I go</p> <p>14 through four steps -- well, five steps, to get to</p> <p>15 this point. So --</p> <p>16 Q. Well, I mean, most of the steps, in</p> <p>17 fairness, are to try to figure out what the</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 A. I mean, in fairness, each one of the</p> <p>23 steps is -- it -- equally important. [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>
<p>183</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 Q. Okay. So -- just taking a -- a big step</p>	<p>185</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 Q. But -- and -- and the profit split</p> <p>7 methodology is basically you're just comparing --</p> <p>8 and that -- that's what we talked about earlier</p> <p>9 [REDACTED] that's</p> <p>10 basically another way of thinking about it is,</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 So to make sure that --</p> <p>20 Q. Yes.</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 Q. Now, a reasonable royalty calculated by</p> <p>25 [REDACTED] really very highly dependent on</p>

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Lasinski, Michael J.

February 17, 2021

48 (Pages 186 to 189)

186

the profitability of the company that you're dealing with. Right?

A. Can I just finish? I was -- I was starting --

Q. I'm sorry.

A. -- that question, so if I could just finish that.

Q. Yeah, I'm sorry.

A. Then on top of that, I just want to make sure that there's numerous areas where I was conservative in my calculations, as I laid out in

I'm sorry. So I completely missed your last question.

Q. I've got to get -- I've got to remember it now too.

Okay. So now, a reasonable royalty calculated by [REDACTED] company as whole that you're dealing with. Right?

A. That's one of the things that you look at is the profitability of the company.

Or some (inaudible) like I did here.

THE COURT REPORTER: I didn't hear that

188

Q. Okay. So let's talk about the -- putting aside the -- the conversation about the profit split. Let's talk about sort of adding up the -- the units to get to your total excess profit calculation.

We talked about that, we -- we touched on it briefly, but then we got into the discussion about profit splitting. So I'd like to reset in terms of tallying the -- the number of units. Okay?

A. Okay.

187

last.

A. For some of the inputs, like, for example, the normal operating profit margin here.

Q. So, if you're calculating a royalty based on a company's profitability in part, is that consistent with a RAND license where you're supposed to give the same royalty to all the different licensees independent of their profitability?

A. Yes.

Q. How -- how is that consistent?

A. Because what we're -- what you're supposed to do is, in my -- based on my work in the RAND context, is use a similar methodology to calculate what a royalty rate is.

And as long as you use a similar methodology to calculate what a royalty rate is, you're consistent with the RAND framework.

Q. So you can charge more to a company that's more profitable and less to a company that's less profitable?

A. I'm not a legal expert on this, but my understanding is that there's broad latitude under how you determine royalties, and as long as you treat similar companies similarly, that's allowed.

189

[REDACTED]

Q. Okay. I -- I'm just looking at my realtime. I think I may have spoken at the same time but I caught the yes part.

So, just to be clear, when you calculated [REDACTED]

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Lasinski, Michael J.

February 17, 2021

49 (Pages 190 to 193)

<p style="text-align: right;">190</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 And again, I'm just moving my answer</p> <p>7 from the last time in case we didn't -- didn't get</p> <p>8 it on the record.</p> <p>9 I understand that there may be some sort</p> <p>10 of dispute about that, and that that's a legal</p> <p>11 issue. So to the extent that there needs to be an</p> <p>12 adjustment to that, that's something I could</p> <p>13 consider.</p> <p>14 But at this time, I understand that it</p> <p>15 does not need to necessarily be owned by a service</p> <p>16 provider, owned or controlled by a service</p> <p>17 provider.</p> <p>18 Q. Got it.</p> <p>19 [REDACTED]</p> <p>20 [REDACTED] But at the same time, you say,</p> <p>21 a legal dispute, am I correct, that you don't</p> <p>22 necessarily -- you're not taking a position on</p> <p>23 that legal dispute, you're just -- your</p> <p>24 calculation is assuming that whether it's service</p> <p>25 provider or not does -- doesn't affect the</p>	<p style="text-align: right;">192</p> <p>1 confusing more to you, and your answers have been</p> <p>2 confusing more to me because I was -- flipped and</p> <p>3 I was misspeaking.</p> <p>4 Let me see if I can go back and untangle</p> <p>5 that mess. Thank you for that clarification.</p> <p>6 All right. Just so that we have a clear</p> <p>7 record, because I'm having trouble finding it on</p> <p>8 the -- on the real time here.</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 A. Correct.</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">191</p> <p>1 numbers. Right?</p> <p>2 A. Well, that's not accurate. Obviously,</p> <p>3 if -- if you -- if you include service providers</p> <p>4 or you don't include -- or you -- and -- or you</p> <p>5 don't include service providers or you include</p> <p>6 more than just service providers, that does affect</p> <p>7 the numbers.</p> <p>8 Q. Okay. I'm sorry, I was inarticulate.</p> <p>9 You said you understand that it's a</p> <p>10 legal dispute. You don't have a position one way</p> <p>11 or the other on that legal dispute, you're just</p> <p>12 making an assumption with respect to whether or</p> <p>13 not you should be including service providers, and</p> <p>14 you're including them based on your assumption.</p> <p>15 Is that right?</p> <p>16 A. Yes.</p> <p>17 Just to make sure that the record is</p> <p>18 clear, though, I -- I think you were asking me,</p> <p>19 when you started this line of question, whether or</p> <p>20 not you should include non-service providers. And</p> <p>21 now you're asking me whether or not I should</p> <p>22 include service providers.</p> <p>23 Q. Oh. Yeah, well, I'm sorry. You're --</p> <p>24 you're right, as I would expect.</p> <p>25 And I guess my -- my questions have been</p>	<p style="text-align: right;">193</p> <p>1 But sitting here -- so sitting here</p> <p>2 today, [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 Q. Okay. In tallying up the units for --</p> <p>8 that included the MAP capability, am I right that</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 Q. Okay. And you -- based on your layman's</p> <p>17 understanding, you're aware that the IPv6 to IPv4</p> <p>18 interoperability technology is only relevant to</p> <p>19 edge routers. Is that right?</p> <p>20 A. I mean, that's not inconsistent with my</p> <p>21 understanding, but I'm not -- I have no opinion on</p> <p>22 that.</p> <p>23 Q. Okay. So you didn't form any opinions</p> <p>24 on whether the MAP feature would be valuable to an</p> <p>25 edge router but not valuable to a -- a core</p>

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Lasinski, Michael J.

February 17, 2021

55 (Pages 214 to 217)

<p>214</p> <p>1 that's a technical question. Right?</p> <p>2 A. That is a technical question.</p> <p>3 [REDACTED]</p> <p>12 [REDACTED]</p>	<p>216</p> <p>1 [REDACTED]</p>
<p>215</p> <p>1 [REDACTED]</p>	<p>217</p> <p>1 [REDACTED]</p>

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Lasinski, Michael J.

February 17, 2021

56 (Pages 218 to 221)

<p>218</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 A. Hold on. I think --</p> <p>7 Q. I'm sorry. 210. I misspoke, 210.</p> <p>8 A. Okay.</p> <p>9 Q. You say, At this time, I have not</p> <p>10 derived royalty indicators by reference to the</p> <p>11 produced patent -- the produced licenses; however,</p> <p>12 it is [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 Right?</p> <p>16 A. Correct.</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p>220</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 Q. Okay. So going forward to paragraph</p> <p>18 213, you say that you're not aware of any viable</p> <p>19 alternatives to the patents in suit that would</p> <p>20 have been known and accepted during the period</p> <p>21 leading up to hypothetical negotiation. Right?</p> <p>22 A. Correct.</p> <p>23 Q. And I -- I think we covered this. I</p> <p>24 apologize. I may have gotten ahead of myself</p> <p>25 earlier, but -- you don't personally have opinions</p>
<p>219</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 Q. And the same thing is true with the --</p> <p>11 or let me step back.</p> <p>12 There is no dispute in this case about</p> <p>13 Cisco paying a lump sum. You and Mr. Reading</p> <p>14 agree on that, right?</p> <p>15 A. Correct.</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p>221</p> <p>1 on non-infringing alternatives. You rely on -- on</p> <p>2 Dr. Walker; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. And you don't have a sufficient</p> <p>5 technical background to know whether a particular</p> <p>6 technology would be technically acceptable.</p> <p>7 Right?</p> <p>8 A. I don't -- I don't have -- yes, I do not</p> <p>9 have that background.</p> <p>10 Q. And you haven't done any analysis about</p> <p>11 whether a particular technology would be</p> <p>12 economically accessible, right? Acceptable.</p> <p>13 A. Okay.</p> <p>14 Q. Let me say it -- let me say it again.</p> <p>15 I'm sorry. I -- I misspoke.</p> <p>16 You haven't done any economic analysis</p> <p>17 about whether any of the proposed alternatives</p> <p>18 would be economically acceptable.</p> <p>19 A. Not -- not the non-infringing</p> <p>20 alternatives that have been identified by Cisco.</p> <p>21 Q. If a Cisco witness were to tell the jury</p> <p>22 that in the U.S. customers are actually using the</p> <p>23 alternatives and that they're commercially</p> <p>24 acceptable to Cisco's customers, would you agree</p> <p>25 that that would impact the reasonable royalty in</p>

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Lasinski, Michael J.

February 17, 2021

57 (Pages 222 to 225)

<p style="text-align: right;">222</p> <p>1 this case?</p> <p>2 A. I don't know how to answer that. As I</p> <p>3 sit here, my understanding is that there are no</p> <p>4 non-infringing alternatives at that are</p> <p>5 acceptable. So if the jury were to think that</p> <p>6 there were acceptable non-infringing alternatives,</p> <p>7 that's not part of my opinion.</p> <p>8 Q. I guess, let me -- let me phrase it this</p> <p>9 way: You're aware that there's this dispute about</p> <p>10 whether or not there are available non-infringing</p> <p>11 alternatives, right?</p> <p>12 A. Correct.</p> <p>13 Q. And you have assumed, based on your</p> <p>14 reliance on what Dr. Walker told you, that there</p> <p>15 are no non-infringing alternatives available to</p> <p>16 the parties at the hypothetical negotiation.</p> <p>17 Right?</p> <p>18 A. Correct.</p> <p>19 Q. If, instead, I were to ask you to assume</p> <p>20 that there were, in fact, non-infringing</p> <p>21 alternatives available to the parties at the</p> <p>22 hypothetical negotiation, you would have to redo</p> <p>23 your analysis to consider that fact, right?</p> <p>24 A. If I were -- yes, if I'm being asked to</p> <p>25 assume that a fact is inconsistent with the facts</p>	<p style="text-align: right;">224</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>
<p style="text-align: right;">223</p> <p>1 that I've assumed for my analysis, I would need to</p> <p>2 think about -- I don't know if I would need to</p> <p>3 redo my analysis or not, but I would need to think</p> <p>4 about whether or not it would impact my analysis.</p> <p>5 Q. Okay. And you have not thought about</p> <p>6 how and if the availability of non-infringing</p> <p>7 alternatives, if you were to assume they were</p> <p>8 available, how that would impact your analysis.</p> <p>9 True?</p> <p>10 A. Correct.</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">225</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>

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